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Thomas A. Beck
26 Rockledge Lane
New Milford, CT 06776

In re Application of	:	DECISION ON
BLOECHL	:	
Application No.: 09/445,261	:	
PCT No.: PCT/IB98/01017	:	
Int. Filing Date: 1 July 1998	:	PETITION UNDER
Priority Date: 5 March 1998	:	
Attorney's Docket No.: SZ997-026	:	
For: MATERIAL WITH REDUCED OPTICAL	:	
ABSORPTION	:	37 CFR 1.181

This decision is in response to the "COMMUNICATION" filed on 23 June 2005, which is being treated as petition under 37 CFR 1.181 requesting the withdrawal of holding of abandonment of the aforementioned application because the executed declaration was filed and applicant has no record of receiving a USPTO decision that the application was abandoned for failure to pay the national filing fee.

BACKGROUND

In a communication from this Office on 13 May 2002, it stated the petition filed under 37 CFR 1.137(b) was dismissed for failure to the basic national fee. The decision stated that petitioner did not satisfy requirement (1) under 37 CFR 1.137(b) because the proper the reply, the basic national filing fee, had not been provided.

On 23 June 2005, applicants filed the instant petition, which states that applicant has no record of ever receiving a USPTO decision which allegedly holds the application is abandoned for failure to pay the national filing fee timely.

BACKGROUND

National Stage Commencement under 35 USC 371(c)(1) clearly states that the basic national fee is required at the time of filing the national stage application. The relevant part under 35 U.S.C. 371 National stage: Commencement.

- (c) The applicant shall file in the Patent and Trademark Office —
- (1) the national fee provided in section 41(a) of this title; ...
- (4) an oath or declaration of the inventor (or other person authorized under chapter 11 of this title) complying with the requirements of section 115 of this title and with regulations prescribed for oaths or declarations of applicants;

In addition, section (d) the relevant part states that:

(d) The requirement with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Director.

Moreover, § 1.495 entering the national stage in the United States of America states the time period to the national fee as thirty-months from the priority date in order to avoid abandonment. The relevant part states:

(a) The applicant in an international application must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. The thirty-month time period set forth in paragraphs (b), (c), (d), (e) and (h) of this section may not be extended. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of thirty months from the priority date:

(1) A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; and

(2) The basic national fee (see § 1.492(a)).

(h) An international application becomes abandoned as to the United States thirty months from the priority date if the requirements of paragraph (b) of this section have not been complied with within thirty months from the priority date. If the requirements of paragraph (b) of this section are complied with within thirty months from the priority date but either of any required translation of the international application as filed or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

As indicated in the petition decision of 13 May 2005, the reason the application is abandoned is for the failure by the applicant to pay the basic national filing fee timely, which was at the time of national stage commencement.

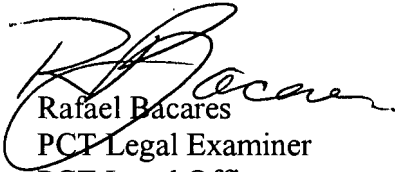
CONCLUSION

For reasons above, the petition under 37 CFR 1.181 is **DISMISSED**, without prejudice.

The application remains **ABANDONED**.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired or if applicant decides to file a petition to revive under 37 CFR 1.137(b), applicant must file such within **Two (2) MONTHS** from the mail date of this Decision.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the office of PCT Legal Administration.



Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (571) 272-3276
Fax: (571) 273-0459